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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 72-1126

DELBERT C. HERBERT, individually and on behalf of employees of the previously existing Sinclair Oil Corporation, the employees of Atlantic Richfield Company and employment agencies who provided temporary help for such corporation,

Petitioners,

v.

ATLANTIC RICHFIELD COMPANY and SINCLAIR OIL CORPORATION,

Respondents.

KEN F. MANN, individually and on behalf of all persons employed by Sunray D-X Oil Company and Sun Oil Company as of the date of merger of these two companies,

Petitioners,

v.

SUNRAY D-X OIL COMPANY and SUN OIL COMPANY,

Respondents.

DEL JEANNETTE JOBE individually and on behalf of employees of the previously existing Amerada Petroleum Corporation, the employees of the previously existing Hess Oil and Chemical, and the employees of Amerada Hess Corporation,

Petitioners,

v.

AMERADA PETROLEUM CORPORATION, HESS OIL & CHEMICAL CORPORATION, and AMERADA HESS CORPORATION,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

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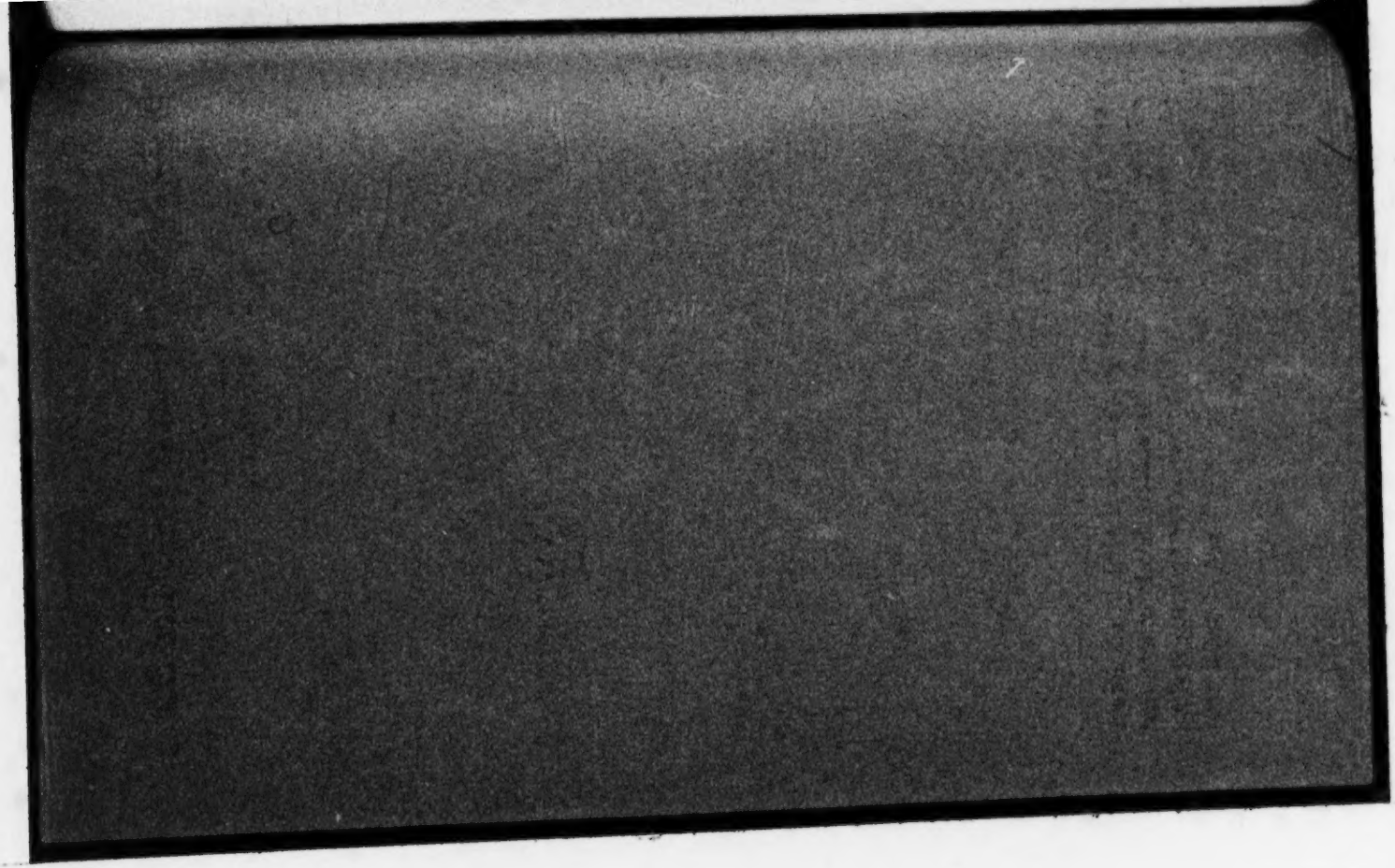

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1134

DELBERT C. REIBERT, individually and on behalf of employees of the previously existing Sinclair Oil Corporation, the employees of Atlantic Richfield Company and employment agencies who provided temporary help for each corporation,

Petitioners,

v.

ATLANTIC RICHFIELD COMPANY and SINCLAIR OIL CORPORATION,

Respondents.

KEN F. MANS, individually and on behalf of all persons employed by Sunray D-X Oil Company and Sun Oil Company as of the date of merger of these two companies,

Petitioners,

v.

SUNRAY D-X OIL COMPANY and SUN OIL COMPANY,

Respondents.

DEL JEANNENE JOBE individually and on behalf of employees of the previously existing Amerada Petroleum Corporation, the employees of the previously existing Hess Oil and Chemical, and the employees of Amerada Hess Corporation,

Petitioners,

v.

AMERADA PETROLEUM CORPORATION, HESS OIL & CHEMICAL CORPORATION, and AMERADA HESS CORPORATION,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

On May 12, 1973, this Court declined to reconsider its earlier action on the petition for a writ of certiorari. Since these petitions, there have been developments that must be considered important reasons for granting review. This Court is respectfully requested to give careful consideration to these developments.

This motion is not filed with any great expectations that it will be granted. Statistics indicated that this Court favors government antitrust enforcement over private suits; although, it should be noted that this is the antithesis of what Congress intended. Recorded experience indicates that this Court will grant certiorari in only about 5% of private cases while granting review in 80% of the cases filed by the Government.

In spite of the enormous odds against the petitioners, we would be remiss in our duty as lawyers representing the many working people involved if a single stone were left unturned. If this motion is denied, these employees can at least be told in good conscience that their jobless fate was the result of a faulty but pervasive economic philosophy and a judicial aberration; and not the result of a lack of vigor and determination in their representation. For the sake of our nation, however, it would be better if the employees could be told that their loss resulted from poor and inadequate counsel. At least if this were the case, a more capable lawyer could salvage the job protection that Congress intended the antitrust laws to provide.

The most important reason not heretofore considered for granting review in the present case involves the tragedy of what is being referred to as the Watergate. Influence peddling, obstruction of justice, burglary by public officials, perjury, and electronic invasions into the private lives of American citizens are characteristic of the symbol of Watergate. Our government structure and the total political process has been undermined and crippled. Persons who once stood to speak of law and order now stand indicted; but the indictments came only because the free press refused to allow the breach of public duty to be covered up. The vigorous investigation of the Watergate was

not a thing initiated by the Justice Department or other administrative agency.

No one can accurately define the full scope of influence peddling that has occurred under the present administration. One is left only to speculate about incidents recorded in news accounts that have enough ring of truth to cause concern.

1. *Robert Vesco and the SEC*: John Mitchell, our former Attorney General, and Maurice Stans were indicted for alleged influence peddling when they allegedly used their great influence to help financier Robert Vesco. Consideration for this private favoritism was said to be a $200,000 contribution to the Nixon campaign.

2. *I.T.T. Settlement*: For another $200,000 contribution, the Justice Department under the leadership of John Mitchell, allegedly dropped its appeal of an adverse ruling in one of the largest antitrust suits in American history. N.Y. Times, Mar. 1, 1972, sec. 1, at 1, col. 4.

3. *Grain Scandal*: Grain companies, it has been charged, received advance information on the Russian wheat deal which allowed them to take advantage of American wheat farmers. Several private antitrust suits are pending in connection with what has been alleged to be a conspiracy among the grain companies and the United States Department of Agriculture. *In Re: Wheat Farmers Antitrust Actions*, Docket No. 129, Judicial Panel On Multidistrict Litigation.

4. *Atlantic Richfield-Sinclair settlement*: More shocking than any other settlement in an antitrust case was the one in connection with the Atlantic Richfield-Sinclair merger. This settlement was described as "one

> of the most extraordinary remedies ever acquiesced in by the Antitrust Division in the history of antitrust enforcement." *Bartlett Jurisdictional Statement,* p. 6, *Bartlett* v. *United States,* 401 U.S. 986 (1971).

No charge is made of any influence peddling in connection with the Atlantic Richfield-Sinclair settlement. Nevertheless, it is strange that the Justice Department, headed by John Mitchell, did not provide any protection to the employees of the companies. In a much less spectacular case, Ford Motor Company-Auto Lite, the same Justice Department insisted on explicit employee protection. This Court approved a portion of that decree that:

> "protected employees of the New Fostoria Plant by ordering Ford to condition its divestiture sale on the purchaser's assuming the existing wage and pension obligations and to offer employment to any employee displaced by a transfer of nonplug operations from the divested plant." *Ford Motor Company* v. *United States,* 405 U.S. 562, 572 (1972).

Must the only protection afforded be protection provided by the government?

There would have been no need for the terminated Atlantic Richfield employees to assume the heavy burden of this antitrust litigation if the Justice Department had been more vigorous in its prosecution. The employees were sold out by this official enforcement agency which is what Watergate is all about. When Sections 4 and 16 of the Clayton Act were being debated, Congress was fearful of the same problems that are now coming to light under Watergate.

Senator Thompson stated that the Sherman Act failed because "those in power were either too friendly with or

too much afraid of the men of wealth". 51 Cong. Rec. 14,222 (1914). Senator Norris noted that even the hiring of 10,000 lawyers would be ineffective since they would be under the supervision of the Attorney General. 51 Cong. Rec. 14,524 (1914). Denying any vindictiveness toward the then Attorney General, Senator Reed declared:

> "I am not prepared to charge bad faith to past Attorneys General of the United States, but I am prepared to say that, in my humble judgment, the same zeal has not been back of the enforcement of this law many times that has been back of the enforcement of the laws aimed at the poor fellow who makes moonshine whiskey or sells a box of cigars without having the correct number of stamps upon the box. As to any law that has been so enforced that monopoly has grown like a green bay tree, so that its evil roots have spread into every State and every community, I am prepared to say that you need some more enforcement and you need some independent action by independent man." 51 Cong. Rec. 14,522 (1914).

Congress rejected the suggestion that the States' Attorney General be granted antitrust enforcement power. The most effective check on the Attorney General, the "real teeth in enforcement" as Congressman Webb described it, was the private suit seeking treble damages or injunctive relief. 51 Cong. Rec. 16,274 (1914).

The Attorney General would have no power or effect to offer favorable settlements to corporate violators if a private person were likely to follow with a more vigorous enforcement policy. However, when the courts close their doors to the private person who is injured, the Attorney General is free to play games with the American people. This then leads to Watergate situations.

When our courts of law give our public officials room to be corrupt, some public officials can be expected to be backed by a sanction and if sanction is abolished, then there is no law. This, it is suggested, is the present state of the antitrust laws. For this, our nation is weakened and our corporate impersonalities are free to trample on the lives of her people.

So, in this era of scandal in government, big corporations and big money the alternatives for the worker are clear. The institutions have failed when persons are undeniably injured and not a court in the land will respond.

When a segment of society speaks and is not heard there is no reason for further speech. It is over. Lord Coke's pronouncement that "the monopolist who takes a man's job takes his life" is this society's epitaph, and I say it shamelessly, but not without shame for the loss.

We thus request that this Court review the petition so that justice may be served.

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